Thiokol Corporation, Louisiana Division *and* Helenise Scott

International Chemical Workers Union Local No. 525 *and* Helenise Scott. Cases 15-CA-7547 and 15-CB-2254

August 19, 1981

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On December 18, 1980, Administrative Law Judge Richard J. Linton issued the attached Decision in this proceeding. Thereafter, the General Counsel and the Respondent Employer filed exceptions and a supporting brief. The Respondent Union filed an answering brief to the General Counsel's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Thiokol Corporation, Louisiana Division, Shreveport, Louisiana, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order as so modified:

1. Delete paragraph 1(b) and reletter the subsequent paragraphs accordingly.

2. Substitute the attached notice for that of the Administrative Law Judge.

IT IS FURTHER ORDERED that the complaint against the Respondent Union is hereby dismissed.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT coercively interrogate our employees concerning grievances they may file under the collective-bargaining agreement we have with International Chemical Workers Union, Local No. 525.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights which Section 7 of the National Labor Relations Act guarantees.

THIOKOL CORPORATION, LOUISIANA DIVISION

DECISION

STATEMENT OF THE CASE

RICHARD J. LINTON, Administrative Law Judge: This case was heard before me in Shreveport, Louisiana, on July 30–31 and August 1, 25, and 26, 1980, pursuant to a consolidated complaint issued March 13, 1980, by the General Counsel of the National Labor Relations Board through the Regional Director for Region 15. The complaint is based on charges filed by Helenise Scott, an individual (Scott herein), against International Chemical Workers Union, Local No. 525 (Union herein), on January 8, 1980, and amended January 17, 1980, in Case 15-CB-2254, and against Thiokol Corporation, Louisiana Division (Thiokol or Respondent Employer herein), on January 17, and amended January 31, 1980, in Case 15-CA-7547.[1]

In the consolidated complaint, as amended at the hearing, the General Counsel alleges that Thiokol violated Section 8(a)(1) of the Act in transferring Scott from the test area to a lower paying position on the "S" line because of her prior concerted and protected activities.

General Counsel alleges that the Union has breached its "fiduciary duty" to Scott and thereby violated Sec-

[1] The General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] The Administrative Law Judge found that the Respondent Employer violated Sec. 8(a)(1) of the Act when its personnel group supervisor, John Dart, refused to discuss employee Helenise Scott's grievance with her on an individual basis and instead referred her to an agent of the Respondent Union, her statutory bargaining representative. We disagree with this finding. The Respondent Employer had no statutory duty to discuss Scott's grievance with her on an individual basis. On the contrary, we note that for it to have done so without affording the Union an opportunity to be present would have invited a charge that the Respondent Employer had violated its duty to bargain under Secs. 8(a)(5) and 8(d) of the Act. We further note that the Administrative Law Judge has found, and we agree, that the Respondent Union did not conspire with the Respondent Employer against Scott because of her past job complaints and did not breach, in any other ways, its duty of fair representation in the handling of Scott's grievance. Under these circumstances, we find that Dart's refusal to discuss the grievance with Scott alone in no way interfered with, restrained, or coerced her protected right to present that grievance. Accordingly, we will dismiss this allegation of the complaint.

[1] Although the consolidated complaint lists the Union above Thiokol in the caption, apparently on the basis that the CB charge was filed first, I have reversed the caption sequence so that the CA case appears before the CB case.

tion 8(b)(1)(A) of the Act by refusing to file a grievance on her behalf over the transfer, and by processing a grievance Scott filed in a perfunctory manner.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel, the Union, and Thiokol,[2] I make the following:

FINDINGS OF FACT

I. JURISDICTION

Thiokol Corporation, Louisiana Division, a Virginia corporation with a facility located in Shreveport, Louisiana, manufactures, loads, tests, and sells military ammunition. During the past 12 months, Thiokol sold and shipped goods and materials valued in excess of $50,000 from its Shreveport, Louisiana, terminal directly to points located outside the State of Louisiana. Respondents admit, and I find, that Thiokol is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondents admit, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Overview*

1. Contractual language

All parties are here principally because the General Counsel and Scott interpret certain provisions in the current collective-bargaining agreement between the Union and Thiokol in one fashion, whereas the Union and Thiokol draw a different conclusion. To understand how that contractual dispute grew into this unfair labor practice litigation, we first must consider the contractual language the parties are debating. The current contract covers the period February 15, 1979, through February 14, 1982,[3] and contains the following pertinent clauses.

Article 11 covers seniority (defined in sec. A), and section B relates to "Promotion, Transfer and Assignment." Subsections 3 and 4 (art. 11,B,3–4) read as follows (emphasis supplied):

> 3. To assist bargaining unit employees in their desire to obtain transfers and promotions, the employees may indicate their desire for a specific classification. The Company will indicate to the employee his *acceptability* for the classification. After other provisions of this Article have been satisfied, employees accepted for a classification shall be offered the opportunity to fill a vacancy in the classification in order of their seniority.
>
> 4. An employee selected for promotion to a higher job classification shall within *twenty days demonstrate his ability to perform the job.* If the employee fails to demonstrate satisfactory progress, he may be disqualified prior to the completion of the qualifying period and returned to the classification he held previously. The trial period may be extended by mutual agreement.

Section C covers "Layoff, Demotion and Re-Employment." Subsection 2 and the relevant portion of subsection 3 provide [Emphasis supplied]:

> 2. Permanent layoffs and demotions in the Bargaining Unit will be governed by unit seniority within the seniority unit, provided that the employees remaining are *qualified* to do the remaining work.
>
> 3. After other provisions of this Article have been satisfied, affected employees may, at the time of layoff or demotion, on the basis of their unit seniority, bump the least senior employees in the entry level jobs, if qualified to perform those jobs.

Section A.2. defines the three recognized types of seniority as:[4]

> a. Plant seniority is the length of time an employee has been continuously employed by the Company at the Louisiana Army Ammunition Plant.
>
> b. Unit seniority is the length of time an employee has been continuously assigned to jobs falling within the bargaining unit.
>
> c. Classification seniority is the length of time an employee has been continuously employed in a particular job classification.

2. Scott "bumped" in early December 1979

Thiokol, as contractor, operates the United States Army's Shreveport, Louisiana, Army Ammunition Plant (LAAP). Scott, whose bargaining unit seniority date is May 25, 1966, began working as an inspector in the test area in February 1979. Mary Amos, whose bargaining unit seniority date is January 30, 1962, transferred to the test area as an inspector on November 19, 1979; and on November 26, 1979, John T. Jackson, with a bargaining unit seniority date of January 26, 1966, also transferred there as an inspector.[5]

In early December 1979, certain work (the "XM 795") was moved from the test area to the S-Line. This caused

[2] Scott participated as a witness only and filed no brief.

[3] The "red" book (G.C. Exh. 3). The previous contract (G.C. Exh. 2) covered the period 2-14-76 through 2-14-79 and is known as the "orange" book because, of course, its cover is orange. A "gray" book (G.C. Exh. 9) is in evidence covering an earlier period of 2-12-71 through 2-13-74 and is a copy of the contract between the Union and Thiokol's predecessor, Louisiana Army Plant, Division of Sperry Rand Corporation.

[4] Subsec. 1 provides, in part, "Seniority will be the determining factor where the employee has been given security clearance and where qualifications such as ability, aptitude and physical fitness are approximately equal among employees."

[5] There is no dispute that when a transferee is deemed "qualified" within 20 days, or automatically at the completion of 20 days, overall bargaining seniority prevails over seniority in the classification when there is a layoff in the classification. Much of the evidence in this case centered around the issue of how an employee becomes "qualified" before the 20 days; for in the instant case, the reduction in force occurred before Amos and Jackson had been in the test area for 20 days.

a need for Thiokol to reduce its test area force by two workers. As a result of the bumping which followed, Scott and Michael Triplet were bumped (actually termed a layoff, but by exercising her bargaining unit seniority, Scott bumped into a position paying 52 cents per hour less) and Scott transferred to S-Line. Amos and Jackson remained in the test area even though they had been there less than 20 days. If they had not "qualified," or been deemed so, then they should have been returned to their previous departments, and Scott would have remained in the test area. Scott, of course, wanted to remain in the test area. Therefore, the parties looked to the contractual language covering this situation.

3. General contractal interpretations and case theories of the parties

The General Counsel contends that the quoted contractual language is clear and very simply means that before there can be a transfer, there must be a vacancy (art. 11-B-3);[6] that as Amos and Jackson were promoted into the test area, they had to be there 20 days before they automatically qualified, or expressly be notified by supervision that they were considered *qualified* in less than 20 days in order to remain in the test area under article 11-C-2.[7] General Counsel contends that none of the foregoing occurred, and that what really happened was that the Union and Thiokol conspired to lay Scott off from the test area because of her very recent, as well as past, claims of mistreatment, including claims of discrimination against her because she is a member of the Black race. Such conspiracy supposedly covered up the fact that there had been no vacancies for permanent jobs for Amos and Jackson, and in order to keep them, and get rid of Scott, Respondents had to create a false explanation of how there were two vacancies for permanent jobs in the test area for Amos and Jackson to fill.

Although the General Counsel does not so express it in her brief, it seems that she in effect, contends that Respondents' scheme hit a snag because they failed to let Amos and Jackson serve in the test area a full 20 days (in order to qualify to bump Scott under art. 11-B-4 and 11-C-2) before Thiokol moved the XM 795 work to the S-Line.

Also not fully explicated by the General Counsel, is the portion of her theory which attacks the credibility of Respondents' testimony and evidence. The critical fact of the matter is that the General Counsel has practically no affirmative evidence that Thiokol was so motivated (and very little as to the Union). Therefore, the General Counsel's case depends in large measure on my not only disbelieving Technical Director Luther Johnson and Personnel Supervisor William G. Bullock,[8] but also finding the opposite to be true.[9]

For example, a basic factor in the General Counsel's case is the element of timing. Thus, after certain events of December 3 and 4, 1979 (Scott's most recent complaints), Thiokol "abruptly" notified Scott (and employee Mike Triplet) on Thursday, December 6, of the reduction in force (RIF) by two inspectors. It becomes extremely critical to the General Counsel's case that a finding be made, not only of a conspiracy, but that it occurred between December 4 and 6. The General Counsel argues that the Union's January 18, 1980, position letter in this case, from Union President Verdis Gilbert to the Regional Office, demonstrates that the conspiracy meeting was held on December 4, because of a paragraph on the second page reading:

> On Tuesday, 4 December 1979, the Union and the Company met to discuss the above-referenced "reduction" to determine whether or not it was contractually correct. As a result of this meeting, it was determined by the parties that the proposed "reduction-in-force" was contractually correct and that the Union would not file a grievance.

Gilbert testified that the December 4 date is a typographical error, and that this meeting with Thiokol was not until the following week. A reading of the entire letter, which outlines the sequence of events, shows clearly that the date of December 4 does not fit, and that it necessarily has to be the following week. While the General Counsel does not articulate her theory, she apparently means to contend that the date of December 4 was a "Freudian" slip revealing the truth—that the Union and Thiokol really met on December 4 and conspired, for unlawful reasons, to arrange the transfer of the XM 795[10] work from the test area to the S-Line area, to keep Amos and Jackson, and to layoff/demote Scott. However, there is no affirmative evidence indicating that any such meeting was held between the Union and Thiokol prior to December 6, or at any other time. While there is a brief remark by Group Supervisor Joe West on December 6, 1979, when notifying Scott of her layoff, that Thiokol and the Union had agreed that Scott and Mike Triplet were junior and would have to be laid off, such a ministerial communication falls far short of affirmative evidence of a prearrangement conspiracy.

Nor does the General Counsel explain just what all this conspiracy accomplished. While there is no doubt the demotion has caused Scott to leave a job which she preferred, and moved her to a job paying 52 cents per hour less, this caliginous plot simply moved Scott from one area of Thiokol's facility to another. It did not have

[6] The parties do not dispute that there must be a vacancy before a permanent transfer is proper.

[7] Respondents contend that there in fact were two vacancies to fill, that Amos and Jackson had demonstrated the ability to perform the job of inspector and, since not disqualified, they were "qualified." As Personnel Supervisor Bullock explained, Thiokol has the affirmative burden to *disqualify* an employee within 20 days under art. 11-B-4. It is undisputed that Amos and Jackson have more overall bargaining unit seniority than Scott. Thus, if there were permanent vacancies to fill, the key contractual debate revolves around the issue of qualifying within 20 days (or, as Respondents frame it, not being *disqualified* by Thiokol within the 20 days).

[8] Both of whom I credit in all significant respects based chiefly on their demeanor as witnesses. Each testified in a forthright, candid, and believable manner.

[9] *N.L.R.B.* v. *Walton Manufacturing Company & Loganville Pants Co.*, 369 U.S. 404 (1962), not cited by counsel for the General Counsel in her brief.

[10] The XM 795 is an experimental 155mm howitzer projectile Thiokol is producing and testing for the United States Army.

the effect, and apparently not even the hope, of terminating Scott's employment.

Such an elaborate and complicated conspiracy theory, even indirectly requiring cooperation by the United States Army civilian defense representatives, with no more hope than a transfer of Scott from the test area to another department at Thiokol's facility (so that Thiokol and the Union do not even get shed of Scott), rates an A-plus for resourceful imagination. But the evidence fails to support the theory.

With respect to the issue of race (an issue which General Counsel and Scott both concede is only secondarily involved), I note that although Scott is black, and Thiokol's managers/supervisors involved here are white, Union President Verdis Gilbert is black as are employees Amos and Jackson. Jack Williamson, International representative for the Union, is white. Mike Triplet, bumped with Scott, is white.

Respecting motive, Respondents contend that they had no illegal animus toward Scott, and that the affirmative proof of that lies in the fact that when Scott was promoted to the test area in February 1979, she experienced difficulty in "demonstrating her ability to perform" the job.[11] Union President Gilbert, in an effort to assist Scott to keep her new inspector job in the test area, mutually agreed with Thiokol for Scott, per artice 11-B-4 of the contract, to have three extensions of her qualifying period. Had they wanted to "get" Scott, it would seem they would have done so by not agreeing to such extensions.

B. *Facts*

1. Scott's employment problems

Scott began working at LAAP on May 25, 1966. In the Union, she has served as job steward, chief steward, and as a member of the Union's executive board. At the hearing, she described herself as "outspoken" and she theorized that her problems stem chiefly from the fact that she is outspoken.

In February 1979, Scott transferred to the test area as an inspector. So far as the record shows, Scott's employment problems did not commence until she began her duties in the test area. She had trouble demonstrating that she had the ability to perform the duties there, and Thiokol and Union President Verdis Gilbert three times mutually agreed to extensions of her 20-day qualifying period in accordance with article 11-B-4 of the contract.

On March 29, 1979, Scott received her first written warning from Supervisor Earl Uzzle for disconnecting a grounding wire during preparations by other personnel for a test. On June 20, 1979, she received her second written warning, and a 3-day suspension, from Supervisor Robert H. Dayberry for improperly entering area T-6 while an explosive device was being tested. Scott does not dispute that she committed the acts, but her testimonial version describes mitigating circumstances. At the hearing she stated that she thinks the suspension penalty was too severe. I deem it unnecessary to go into all the details of these warnings.[12] However, following receipt of her suspension notice, Scott requested, and was granted, an interview with General Manager Leo Long. Also present at the interview was Personnel Supervisor Bullock, and Technical Director Johnson was called to attend.

At this meeting, Scott displayed extensive notes which she had made purportedly regarding rules violations by other employees who were not disciplined.[13] In essence, Scott contended that she was being singled out by supervision for unfair treatment. This meeting was followed by further investigation by Johnson. The end result was that Scott returned to work after a suspension.

According to a synthesis of Scott's own theory,[14] it appears that she believes the people she worked with in the test area, all of whom were white, were opposed to her presence and did not want her there. Scott specifically attributes this chiefly to her personality style of being "outspoken," but secondarily because she is black.[15] Thus, "They labeled me a smart aleck because I would defend myself. I didn't back down if I thought I was right and if I thought I was wrong, I didn't try to argue the point, but I defended myself and I kind of had the feeling that these white ladies had the feeling that I was sassy." Scott stated that she had exchanged a "good cussing spree" with coworkers Sandra Sparkman and Mary Frances Roberts. Moreover, Scott feels that Supervisors Uzzle and Dayberry shared her female coworkers' opposition to Scott and even harassed her by speaking to her in an unfriendly fashion and issuing warnings to her when not to others.

Despite Scott's suspicions, I find that it is not at all clear that Supervisors Dayberry and Uzzle were cooperating with Scott's coworkers in a conspiracy to get her removed from the test area because of any protected activities or because of her race.[16] However, assuming, for the moment, that such were true, the evidence still must show a causal link between that improper motivation and Scott's December 7, 1979, layoff. As I explain below, I find that the evidence fails to establish this link. Thus, the decision to move the XM 795 testing to the S-Line came from Technical Director Luther Johnson,[17] and there is no evidence that he became a part of any alleged

[11] It is very likely that this threshold consideration of "demonstrating ability to perform" has been referred to by both supervision and rank-and-file employees as "qualifying" or "qualified." Scott testified that she began working in the test area on February 2, 1979. However, as the parties stipulated, she was not "promoted" until March 18, 1979.

[12] Apparently no charges were ever filed over the warnings.

[13] Scott testified that she wrote the notes the night before.

[14] As reflected in her testimony, Scott is not always precise regarding her own theory of her problems. Of course, the General Counsel is not restricted to what Scott personally theorizes.

[15] Scott testified that she was the first black to qualify for work in the test area.

[16] Such would be deplorable, as well as illegal, if true. Respecting the race matter, there is no evidence that Scott's coworkers or supervisors ever referred to her race as a point of controversy. In fact, it would seem from the record that when the coworkers felt (as Scott perceived) that she was being "sassy," it was only Scott who interpreted that mental/vocal description to be an old throwback reference to her race rather than just to her outspoken manner. To the extent Scott's coworkers did not like her, it would appear that it was because of her personality style rather than her race.

[17] Whom Scott describes as a fair man.

conspiracy to remove Scott from the test area.[18] Moreover, the evidence fails to establish that Thiokol's and the Union's interpretation of the layoff/demotion clauses in the contract (article 11-C-2) was devised, as has since been followed, just to get at Scott.

2. The XM 795 howitzer shell

(a) *Background*

The work from which Scott was laid off was development of the United States Army's XM 795 155 millimeter howitzer shell. Technical Director Luther Johnson, whom I fully credit, gave detailed testimony regarding the project. Even to summarize the details would unjustifiably lengthen this decision. It is sufficient to note that in the spring of 1978 the United States Army Research and Development Command (ARRADCOM) requested Thiokol to submit a bid for producing 314 experimental artillery rounds identified as the XM 795. This shell was designed to be a possible replacement for the M107, a projectile Thiokol had been producing at the LAAP for many years.

The entire XM 795 program experienced substantial delays, most of which seem to have been caused by the Army's failure to provide specific x-ray testing standards.[19] The new testing process required that each XM 795 produced be nose dropped,[20] kept in a nose down position, radiographed with a new type of x-ray film, then sectioned so that the amount of core base separation could be observed. By contrast, only a small fraction of the M107's produced required testing which consisted of a radiograph, sectioning, and nose dropping, in that order. This factor, coupled with an increased production requirement from ARRADCOM in early October 1979, to 2,266 shells, created problems which had not been contemplated by Thiokol.

Also in early October 1979, ARRADCOM imposed a production and testing requirement of 48 shells per day on Thiokol so that the December 1979 delivery date could be met (Resp. Exh. 20).

Thiokol then realized that there would be some difficulty with testing the XM 795 in the manner required by ARRADCOM. Had the initial production schedules remained intact, test area employees would have been able to complete the necessary testing in the normal course of the workday, but because of the delays and increased production requirements, the time frame for completing production and testing of the XM 795 for shipment to the Army's Arizona proving ground was becoming rapidly compressed.

Despite ARRADCOM's assurances that radiographic parameters would be finalized shortly after an October 3, 1979, meeting with Thiokol, it was not until October 15, 1979, that this problem was resolved. This caused delivery of the "first article" (a sample of the shells to be produced) to be delayed so that final manufacturing approval was not received by the Company until mid-November 1979. The December 1979 delivery date, however, remained unchanged. The Company, therefore, had to gamble that these projectiles would be acceptable, and so it commenced testing of the XM 795 in late October.

The delays associated with the XM 795 project, coupled with an overall increase in the production requirements and the added edict of ARRADCOM to manufacture and test 48 shells per day, caused Thiokol to suspend testing of other projectiles and concentrate all of its efforts on the XM 795. Thiokol originally intended to drop test the XM 795 at the Central Proving Ground (CPG herein) using the current staff of test area inspectors. At the conclusion of the October 3 and 4 meetings with ARRADCOM, however, there was some doubt concerning the feasibility of this plan but, with additional staffing, it was hoped the program could be completed as scheduled.

In order to avoid further delays in the XM 795 project, Thiokol began nose dropping the projectile at CPG with unfavorable results. Only eight shells were drop tested on October 31, 1979, largely because of the remoteness of CPG from the production line and associated transportation problems (Resp. Exh. 22). As a result, the Company requested permission to nose drop the XM 795 on the production line to eliminate the transportation problem, but was unable to obtain the parts to construct another drop test device (Resp. Exh. 22). Thiokol then instituted a new procedure for handling the shells at CPG in order to maximize the XM 795 testing effort, but even these efforts were insufficient because rarely did the test area inspectors nose drop 48 shells per day even with two shifts.

(b) *Amos and Jackson transferred*

At this point, early November, Technical Director Johnson told the quality control manager to increase the test area work force by two, a decision with which the industrial engineering department agreed. On November 8, 1979, a requisition for two additional test area inspectors was forwarded to the personnel department, and subsequently Mary Amos and J. T. Jackson, both of whom are black, were permanently assigned to the test area.[21]

In early November 1979, Johnson and Chisholm discussed the fact that the XM 795 project was temporary in nature. They decided, however, that the job for these two people was to be permanent. When the drop testing of the XM 795 was finished, Johnson was of the opinion that a contaminated waste incinerator, which at that time was under construction, would have been finished, and

[18] As noted earlier, counsel for the General Counsel does not show how it would be to Thiokol's benefit to move Scott from one area to another. While a low-level conspiracy might be so interested, it would not seem that higher management would see any benefit to be gained.

[19] The XM 795 involved required several complex production techniques much different from the M107. Additionally, the testing procedures were very different. Finally, it was not until October 15, 1979, that the X-ray or radiograph standards issue was resolved with the Army.

[20] The projectile is placed in a drop fixture and physically dropped on its nose to simulate the forces the cast would endure upon being loaded into a howitzer.

[21] Names of transfer applicants, such as Amos and Jackson, are maintained by the personnel office. There is no evidence that Uzzle, Dayberry, or any other lower level supervision, or even Quality Control Manager Chisholm had obtained advance knowledge that Amos and Jackson were the top seniority applicants and that they had greater bargaining unit seniority than Scott.

would have required 80 hours work per week of test area inspectors time to operate. Johnson testified that this incinerator was supposed to have been on line no later than January 1980. It should be noted at this point that the two new employees to come into the test area as test area inspectors would come into the area to perform all of the functions of a test area inspector. Their job was not to specifically run this incinerator. Johnson's intentions were merely to devote 80 man hours per week out of the total complement of test area inspectors to run this incinerator. Johnson signed the requisition for two new employees on November 8, 1979.

W. G. Bullock, Industrial relations manager, received this requisition shortly thereafter. At that point, Bullock testified that he went to the request for transfer file and found that Mary Amos and John Jackson were the two senior employees who had requested a transfer to the job classification of test area inspector. At this point, Amos and Jackson were referred to the head of quality control department, R. G. "Buck" Chisholm, who pursuant to article 11, section B, paragraph 3, of General Counsel's Exhibit 3, found them to be acceptable for the classification.[22] Mary Amos went to work as a test area inspector on November 19, 1979, and John Jackson began work as a test area inspector the following week, on November 26, 1979.

4. Scott's December 3 confrontation with Dayberry—Meeting of December 4

Scott testified that on Monday, December 3, 1979, she was assigned to saw a shell at the panel in the control room. After she began sawing, three white employees returned from an errand. Dayberry immediately directed Scott to go to lunch and employee Mike Triplet (a white) to finish sawing her shell.

After returning from lunch, Scott asked Dayberry why he had ordered her to leave. Dayberry merely replied that he wanted her to go to lunch. Scott reminded him that the operator who starts sawing a shell is normally allowed to finish. Dayberry said that he was not James Bryant (Scott's former supervisor) and told Scott that he was the supervisor. Scott then asked, "Bob, why do you discriminate against me?" Scott informed Dayberry that she believed that he was discriminating against her and had done so in the past. Scott told him that she wanted a union steward. Dayberry directed the other employees to leave the control room. When he and Scott were alone, Dayberry told her to wait while he called Supervisor Joe West. Scott also talked with West over the telephone and informed him that she felt her problems with Dayberry necessitated a discussion with higher level management. Scott stated that she wanted him, Buck Chisholm, Bob Dayberry, and the union steward present.

Approximately 25 minutes later, Bobby Howell, the union steward, arrived. Scott reminded Howell that she had been suspended on June 20, 1979, pending possible termination. Scott explained that she was frightened by the previous incidents that had occurred between herself and Dayberry and believed that he was after her. She stated she felt the matter could be resolved without a grievance by a full discussion with higher management. Howell then arranged a meeting the following day with West, Dayberry, and Chisholm (who arrived late). At the Tuesday, December 4, meeting, Scott reminded Dayberry of many past events. Initially, she recalled that he had once told her immediate supervisor, James Bryant, that she and the ordinance inspector were destroying rejected items without supervision. Scott specifically stated that Dayberry accused her of being unfamiliar with the rejected items and incorrectly referring to them. Scott explained that she could not have used the wrong terminology, because the items were totally unfamiliar to her. She recalled that another employee, named Bruno, had admitted being responsible for the errors that had occurred.

Secondly, Scott said that Dayberry had mistakenly accused her of failing to place a decontaminated tag in the correct drawer at BG-5.

Next, she reminded Dayberry that he almost ruined an entire lot of material by refusing to accept her opinion. Scott explained that, at that time, she was the most experienced employee at Central.

Finally, she recalled that Dayberry denied recommending her termination. Upon her conclusion, West complimented Scott's presentation. West also told Scott that he did not believe that Dayberry had intentionally discriminated against her.

After the meeting, Howell and Scott left the room, discussed the situation, and decided not to file a grievance. Upon re-entering the control room, Scott shook Dayberry's hand and assured him that she would not resent justified criticism. Scott said that they were all adults and she merely wanted to be treated as equally as others. She did not want to be the subject of discrimination. According to Scott, Dayberry said, "I don't mean to discriminate against you, Helenise." Howell announced that as a result of the meeting, he and Scott had decided that a grievance was unnecessary. Scott then returned to work.

5. Events of December 5–6

On Wednesday, December 5, 1979, 16 days after Mary Amos came into the test area, Chisholm and Johnson were discussing the difficulties they were still having with the testing. Even with the two additional people they were having a great deal of difficulty nose dropping 48 XM 795 shells a day, plus trying to keep up with the testing of the other munitions. As Johnson described it, "We were just barely keeping our nose above the water."

During this conversation, Johnson recalled the requirement for nose dropping the M107 was not initially envisioned as a permanent requirement. He asked Chisholm to call the Army and ascertain whether it would approve deletion of the nose drop test for the M107; if not a permanent deletion, at least for the duration of the production of the XM 795. The branch of the Army which would make this decision was not ARRADCOM from Picatinny Arsenal, New Jersey; it was ARRCOM in Rock Island, Illinois. If this request were approved, it

[22] Under Respondents' theory, once transferees are deemed acceptable, and thereafter indicate their ability to perform the work, Thiokol has the affirmative burden to act, within 20 days, to disqualify them.

would not only gain man hours which could be devoted to drop testing the XM 795, it would also allow LAAP to move the drop test fixture to the S-Line since there was no safety restriction prohibiting the dropping of the XM 795 on a production line. This would eliminate a 10-mile-trip logistical problem.

The next day, Thursday, December 6, 1979, ARRCOM agreed to suspend the requirement of nose dropping the M107 for the duration of the XM 795 project. Up to this point, Johnson thought that the man hours worked by the two new test area inspectors could, once the XM 795 was completed, be devoted to the operation of the new incinerator. Johnson thought that the incinerator would be turned over by the Army Corps of Engineers to LAAP for operation in January 1980 and, at the worst, it would be 2 to 3 weeks late. It should be noted that the incinerator was under control of a different branch of the Army, the Corp of Engineers in New Orleans, which is different from both ARRADCOM and ARRCOM. However, around this same time frame, he found that there were major engineering problems with a conveyor belt and that the incinerator would not be finished and delivered for an indeterminate period of time.

On December 6, 1979, Johnson and Chisholm made the decision to move the drop test fixture to the S-Line. Because the drop testing of the M107 had been suspended, the drop test fixture for the drop testing of the XM 795 had been moved to the S-Line, and because the incinerator was not on line, Johnson, at a routine staff meeting with Chisholm, decided to reduce the work force of test area inspectors by two persons.

6. Scott is bumped December 6-7

Scott testified that on December 6, 1979, Supervisor James Bryant instructed Scott and fellow employee Mike Triplet to immediately report to him in West's office. Upon arriving, West informed them that the XM 795 projectile had been moved to the S-Line and that it would no longer be dropped in the test area. He explained that the projectile's transfer had necessitated a reduction in force. West informed Scott and Triplet that, since they had the least bargaining unit seniority, Respondent Union and Respondent Employer had agreed to demote them.[23] West said that they would be placed on layoff status effective December 7, 1979.

Scott told West that their demotion was unfair, because they were not the junior employees. She explained that John T. Jackson, Jr., and Mary Amos, the two new test area employees, had not been qualified. West merely repeated what he had stated and handed them a placement form preference card for alternative jobs.

Scott said that she did not have to fill out a card, because her personnel file contained a completed form. She inquired whether West knew that the contract provides for the posting of a 5-day notice in the event of a layoff. West replied that he was following Chisholm's instructions. Scott left the office, retrieved her union contract from her locker, and returned. West instructed her to wait. He called Chisholm and told him that Scott was protesting her layoff. West informed Scott that Chisholm would call back.

Chisholm did not return the call as promised; West called again. After speaking to Chisholm a second time, West stated that their reductions had resulted from an agreement between Union and Thiokol.[24] Scott left the room, walked into the hall, and returned with union steward Bobby Howell. She related the foregoing conversation to him and asked whether Respondent Union had agreed to the demotions. Howell denied being involved and assured her that he had no prior knowledge of them; he agreed that her demotion was incorrect. Then, Howell told West that he would discuss this matter with the personnel director and contact him the following day. Howell did not testify.

After being informed of her demotion, Scott approached Supervisor James Bryant in his office on December 6, 1979. She inquired whether he had qualified Amos and Jackson. Bryant replied in the negative and explained that he had not sufficient time to do so. He stated he had worked with Amos only 3 days and had never worked with Jackson. Bryant did not testify. Bryant's words confirmed Scott's belief that Amos and Jackson had not been qualified since they entered the test area 3 weeks earlier. Scott felt that an immediate investigation was warranted.

That night Howell called Union President Verdis Gilbert to discuss the situation. Gilbert testified that the discussion between Howell and him centered around the issue of whether Amos and Jackson should have stayed in the test area notwithstanding the fact that they had not been there 20 days when the reduction in force occurred. Gilbert concluded the conversation by telling Howell that the next morning he would set up a meeting with Thiokol to investigate the matter.

That same night, Scott called Verdis Gilbert. They discussed her grievance which she expressed in two parts. First, according to Gilbert, Scott contended that since Amos and Jackson had not been in the test area 20 days when the reduction in force came, they were not "qualified to do the remaining work." Second, she stated that Thiokol had created an artificial vacancy because there was no work for Amos and Jackson to do when they came into the area.

It was Gilbert's opinion that under article 11-B-4 a person could demonstrate his ability to perform the job

[23] West did not testify. Thus, there is evidence, through Scott's testimony, that prior to West's notification to Scott on December 6 of her layoff, Thiokol and the Union had some kind of communication in which it was determined that Scott and Triplet, and not Amos and Jackson, would be the ones subject to the RIF. Such a communication is logical. Even though Respondents do not admit there was such a communication, and Union President Gilbert denies any prelayoff conference with Thiokol, I find that any such prelayoff consultation does not assist in establishing the General Counsel's conspiracy theory. This is so chiefly because I credit Johnson's testimony regarding the business reasons and time sequence for moving the XM 795, and Bullock's testimony, and that of Union's witnesses, regarding their interpretation of the contractual provisions. That is, I find that their contractual interpretations are not unreasonable and were not motivated by animus against Scott.

[24] Chisholm apparently was reporting to West what Personnel Supervisor Dart (who did not testify) had told Chisholm. Although the General Counsel did not offer this admission for the truth of the matter, I find that oversight immaterial since West said essentially the same when notifying Scott of her layoff.

on any day from 1 to 20. His interpretation of article 11-C-2 was that when a person had demonstrated his ability to perform the job, he or she was automatically qualified to do the remaining work. Gilbert also told Scott during the same telephone conversation that it was his interpretation of the contract that Thiokol under the management's rights clause of the contract (art. 4) had the exclusive right either to qualify or disqualify people in a particular position. That same night of December 6, 1979, Gilbert telephoned Charles Land, a former president of the Union, and the chief steward in the maintenance group, and asked for his opinion on the contract clauses. Land's opinion was the same as Gilbert's.

7. December 7 meeting between the Union and Thiokol

The next day, December 7, 1979, a meeting took place between Thiokol and the Union to discuss Scott's situation. Present for the Union were Verdis Gilbert and steward Bobby Howell. Present for Thiokol were W. G. Bullock, industrial relations manager; R. G. Chisholm, quality control manager, and Personnel Assistant John Dart. Gilbert testified that he informed Thiokol of the Union's interpretation of the contract. The first question Gilbert asked was how Amos and Jackson got into the department to begin with. Bullock, as Thiokol's chief spokesman, responded that the workload of the test services department was being increased in that it would have to drop test 48 XM 795 projectiles per day and that this necessitated the adding of an additional shift of people. Gilbert was also shown a letter from the Department of the Army establishing this level of production.

The next question which Gilbert addressed was why, if the workload had been increased, was it necessary to reduce the complement of personnel in the test services department by two? In response to this, Gilbert was informed that the Army had approved Chisholm's request to move the drop test fixture and, therefore, the drop testing of the XM 795 from the test area (CPG) to S-Line. At this point, Gilbert was shown another communication from the Army approving the movement of the drop test fixture and the drop testing of the XM 795.[25]

Gilbert initiated a third inquiry. He asked whether Scott was being reduced out of the test area in any part because of her individual actions or having filed grievances in the past. Thiokol denied any such motivation. Chisholm also told Gilbert during the course of this meeting that Amos and Jackson had been qualified in the job of test area inspector. At the end of the meeting, Gilbert took no final position on the matter but told the Company that he would make further inquiries and return to them with his position.

Before reaching a final decision as to the merits of the grievance, Gilbert consulted all of the local union's chief stewards for their interpretation of the contract language involved. The people consulted were Herod Thomas, Bobby Howell, James Clark, and as mentioned above, Charles Land. He also consulted International Union Representative Jack Williamson (who testified at the hearing). Their opinion of the interpretation of the clauses was the same as his.

8. Scott files a grievance

On December 7, 1979, Scott reported to her job on "C" shift. After arriving, she went to the gauge lab and asked if Howell had filed a grievance on her behalf. Howell answered in the negative and informed her that he and Verdis Gilbert had met with Thiokol that morning. Howell explained that, during the meeting, Gilbert had shown him article 11 of the collective-bargaining agreement, which contains the 20-day qualification provision. Howell stated that he and Gilbert had agreed that an employee is not required to remain in a department for 20 days to be qualified. Howell telephoned Gilbert and asked him to repeat this interpretation to Scott. While talking to Gilbert, Scott asked whether he had filed a grievance. Gilbert stated that the contract contained the word "within" and that he had to talk to Jack Williamson, Respondent Union's International representative. However, he promised to contact her as soon as they had spoken.

On December 7, 1979, Scott and Triplet were approached at their work area by Chisholm and West. Scott informed them that she believed that their demotion was unfair. Chisholm expressed his regret and said that the order to relocate the XM 795 had to be moved immediately, because dropping of the M107 should have been eliminated much earlier. Chisholm stated that he hoped the test area work would increase so that Scott and Triplet could be recalled. Scott said that if Amos and Jackson had been returned to their previous classification layoffs would have been unnecessary.

On the evening of December 7, 1979, Scott also talked to Gilbert from the jobsite. According to Scott, Gilbert told her that she had a good case for the National Labor Relations Board. He specifically accused Thiokol of discriminatorily qualifying Amos and Jackson.[26] However, Gilbert explained that he agreed with Thiokol's interpretation of the contract and was, therefore, unable to file a grievance. Scott testified that Gilbert assured her he would call her immediately after talking to Williamson.

Gilbert failed to call Scott as promised, so Scott attempted to contact International Union Representative Jack Williamson. On Saturday, December 8, 1979, Scott called Williamson in Texarkana. When a lady answered the telephone, Scott identified herself and explained that she was trying to reach Williamson. According to Scott, the lady excused herself and a man then answered the telephone. Scott introduced herself again and explained that she worked at Thiokol's Louisiana facility. The man told her that she had reached the wrong number and hung up.

Scott then called Gilbert and reminded him that he had failed to contact her as promised. She explained her unsuccessful attempts to reach Williamson. Gilbert verified that Scott had used the correct telephone number. He reported speaking to Williamson on the previous day,

[25] No party offered the Army's letters as exhibits.

[26] Why Gilbert, at that late date, would so state is unclear. I credit his denial of these allegations.

but informed Scott that winning a grievance on her behalf would be impossible.

Undaunted by these rebuffs, Scott again attempted to reach Williamson. Once again a lady answered. After Scott explained the purpose of the call, the woman informed her that she had reached a wrong number and hung up.

On December 11, 1979, Scott talked to Verdis Gilbert at her work station in the x-ray building. Scott said that she had followed his advice and had contacted the National Labor Relations Board. She explained that Board representatives had suggested filing a grievance with the Union. Scott told Gilbert, "Verdis, there was not a job in the test area." She explained that the XM 795 was a temporary assignment. Scott stated that during October 1979 the employees had worked overtime to perform the same tests.

She told Gilbert that Buck Chisholm had met with test area employees in October 1979. At that gathering, he complimented them on meeting their schedules and informed them that the XM 795 was not test area work. Rather, it was scheduled for S-Line. Chisholm said that although Thiokol had encountered safety problems placing it on the S-Line, certain orders had to be filled immediately. He said that the orders were backlogged. He explained that the test area was selected because it already had a dropping fixture that had been used for the M107. He also notified the employees that a new environmental chamber had been built. Chisholm explained that the T-6 area would soon begin working on this chamber, which would destroy scrap and waste. Then, Chisholm announced that the increased work had necessitated the addition of two new employees and a supervisor in the test area.

After hearing the above explanation, Gilbert told Scott that he wanted to talk to Buck Chisholm. Scott stated, "I am asking you one more time to file a grievance." Scott assured him that she would provide the needed evidence. Finally, she reiterated that Amos and Jackson were temporarily brought to the test area to fill a nonexistent vacancy. Gilbert promised again to contact her after talking to Chisholm and reviewing the job order of the XM 795. Gilbert, however, never called.

Gilbert testified that after his telephone conversation with Scott on December 7 he consulted four other sources. Moreover, he even accepted two "collect" telephone calls to his home from Scott over the next several days. In these calls, Scott, among other things, asked Gilbert to call Jesse Clyde Moore, a former president of the local union, and ask him his opinion of the situation. Also during these same conversations, the clause in article 11-C-2 of "qualified to do the remaining work" was discussed. Gilbert again stated his position that the management rights clause made it the exclusive province of the Company to qualify or disqualify people. Gilbert telephoned Moore and learned that his opinion of the interpretation of the contractual language involved was the same as that of Gilbert's. Gilbert next went to the union hall and spent several evenings digging out old arbitration cases on this language. What he found, he testified, supported his interpretation of the contract.

Scott, in one of the calls, raised the issue with Gilbert that Amos and Jackson could not have been qualified because they were never trained. Before reaching a decision on the merits, Gilbert investigated this. He contacted other employees in the department to ascertain the truth of this allegation. He also questioned Thiokol on this. He was told by Thiokol that they were being trained on crews with experienced test area inspectors in areas different from where Scott was working. The issue was raised as to the amount of work in the test area. Gilbert pursued this matter by putting the question to Mary Frances Roberts, another test area inspector. What she told him confirmed what the Company had said. There was an abundance of work in the test area. Finally, at this point, satisfied that the contract had not been violated by the demotion of Scott, Gilbert called Bullock and informed him that the Union found no contract violation and would, therefore, not pursue the grievance of Helenise Scott.

Scott testified that when Gilbert failed to call her she called Howell. Scott stated, "I want you to file the grievance." She explained that the Company had created a vacancy where none existed. Howell replied that he had to talk to Gilbert. Scott reminded him that as a steward he was obliged to file her grievance. Howell merely repeated that he would call Gilbert. However, he warned Scott that if Gilbert ordered him not to file it then he could not do anything.

Although Scott was unable to obtain assistance from Gilbert, she secured the interest of James Clark, chief steward over C-Line. On December 12, 1979, Clark called Scott and said that he understood that she was having difficulty filing a grievance. Scott agreed and explained that she protested the fact that Respondent Employer had created a vacancy where none existed. She said that they had hired too many employees in the test area. Then, in less than 20 days she and Triplet were laid off. Clark assured Scott that he would sign the grievance if it was written. She provided the written grievance to him, and he signed and mailed the grievance to personnel on December 13, 1979.

On December 13, 1979, Gilbert returned to work and approached Scott at her work station. Gilbert said that he had talked to Williamson and that there would be a union meeting the following Monday or Tuesday. When Scott notified him that she had filed her grievance, he asked whether Howell had assisted her. She replied in the negative. Scott informed him that she had personally filed it and that Clark had signed it.

On December 14, 1979, Scott went to have Supervisor Bubba Banks sign her timecard. When she arrived, he asked why she had filed a grievance against him. Scott denied doing so. Banks said that Gilbert had informed him of the grievance. Scott stated that she had no reason to file a grievance against him. She explained that Banks' name was only given as her immediate supervisor. Scott specifically noticed that during her conversation with Banks, he displayed a critical attitude toward her when discussing her grievance.

After talking to Banks, Scott proceeded to the lunchroom where she saw Verdis Gilbert. She immediately

asked whether he had told Banks that she had filed a grievance against him. Gilbert laughed and asked whether she filed one. Scott replied that she was entitled to file one at any step. She stated that it was filed in the fourth step because that was the appropriate stage.[27] Then, Scott told Gilbert that if he kept her as well informed about Thiokol as he informed them about her he would be a better president.

Lynn Grigsby, a maintenance technician at Thiokol's facility, called as a witness by the General Counsel, testified that while in his work area, around the second week of December 1979, he talked to Gilbert.[28] Grigsby said that Gilbert called Scott stupid and asked if he knew that she had filed a grievance. Gilbert said that he had attempted to help her but did not intend to make himself look little. Grigsby reminded Gilbert that he was obliged to assist anyone regardless of the merits of their complaint. Gilbert told Grigsby that he had already agreed on what to do and did not intend to stick his neck out. Then Gilbert stated that he was responsible for people with the most plant seniority staying in the test area.

Grigsby further testified that Gilbert explained that he had arranged for "them" to transfer to different classifications. Grigsby said that transfers had been in existence for years and were not new. Gilbert replied that the transfers were not a new system, and that whenever Thiokol wanted to change something they notified him. Grigsby said that Thiokol was supposed to notify Gilbert. Then Gilbert, referring to Scott, said, "They moved her out on account of her big mouth." Grigsby stated that Scott was entitled to her own opinion, and if she felt that Respondent Employer had mistreated her she was entitled to complain to the chief steward, job steward, president or vice president, and to have the problem corrected. Gilbert insisted, however, that he did not intend to stick his neck out and that Scott was on her own. Grigsby testified that he told Gilbert that such was a bad policy for him, as president of the Union, to have. Gilbert then stated, "Man do you know I have a grievance in my pocket and I'm not going to let it go any further because the Company and I had already agreed on what to do. I arranged for Mary Amos and Jackson to transfer into the Test Area. When Grigsby inquired how that was done, Gilbert replied, Well you have to know somebody and I know somebody." Then Gilbert related that Williamson called and confirmed that Scott had attempted to reach him. Williamson also confirmed that he told Scott that she had an incorrect number. Finally, Gilbert told Grigsby that Clark was wrong in filing Scott's grievance. Gilbert explained that all stewards are required to contact him before taking action and he intended to call Clark and reprimand him.[29]

James Clark testified that on December 14, 1979, he received a telephone call from Verdis Gilbert in which Gilbert asked him why he signed Scott's grievance. When Clark replied that he thought she had a justified complaint, Gilbert reprimanded him for signing it. Gilbert told Clark that Scott's grievance was outside of his jurisdiction.

During the same week as the above conversation, Clark talked to Howell on C-line. According to Clark, Howell asked why he had signed Scott's grievance. Howell stated that he had acted incorrectly. Clark replied that he believed his action was correct.

On December 17, 1979, Scott made one final effort to have Thiokol resolve her grievance. On that day, she telephoned John Dart, group supervisor in personnel, and asked when they could meet. Dart informed her that he had given her grievance to Gilbert. Scott asked why and reminded him that Gilbert had not filed it, that she did. Dart said that Gilbert was the union president. Scott explained that Gilbert had denied having the grievance when they spoke. Dart replied by saying that he mailed the grievance and that Gilbert may not have received it. Then Scott stated, "Mr. Dart, I'm not getting any representation at all from my union and I'm very sincere about this grievance. I feel like its my right. I have a right to file my own grievance. I have a right to meet with the Company." Dart, however, only suggested that she keep her composure and discuss the grievance with Gilbert. Scott reminded him that she had been a member of the executive board, had held local office, and knew the contract well. Scott repeated that she should be able to meet with the Company. Dart merely replied, "You get with Verdis." Dart did not testify.

9. Special union meeting of December 18

On December 18, 1979, the Union held a meeting at the union hall for all test area inspectors. Among those present were Williamson, Gilbert, Scott, and between 12–30 others (all recollections regarding numbers differed). The meeting was opened by Gilbert, who reported his version of the events. He then introduced Jack Williamson. According to Scott, Williamson discussed the interpretation of several contract clauses. He then discussed the circumstances of her case with the membership and informed them of the parties' respective positions. Scott asked Gilbert if he would admit that Amos and Jackson were brought to the test area when a vacancy did not exist. Gilbert replied that he could not dictate where Thiokol should place a job or whom it should qualify. He then quoted the seniority clause. Finally, Williamson recited the seniority clause and supplied a complete explanation. Scott also recalled another steward, Herod Thomas, commenting on the seniority clause.

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[27] Grievances involving layoffs commence at the fourth step of the grievance procedure under art. 9, step 4, sec. 7 (G.C. Exh. 3).

[28] This conversation appears to have followed Gilbert's investigation of Scott's layoff and his notification to Thiokol that the Union would not proceed further on her grievance.

[29] Gilbert denied ever speaking with Grigsby about Scott's grievance other than at the December 18, 1979, union meeting (to be covered shortly). Based in part on demeanor, and also on Grigsby's at times confusing testimony, I do not credit his testimony regarding Gilbert. It also seems very strange that Gilbert would so conveniently make such admissions to Grigsby after Gilbert's investigation—and in the face of Grigsby's comments favorable to Scott interspersed between Gilbert's alleged remarks. Moreover, at one point Grigsby asserted that he thought Gilbert cooked up the whole deal with Thiokol in order to get Amos and Jackson transferred into the test area, yet a few moments later he denied this. In short, I find Grigsby to be an unreliable witness, and I do not credit his testimony. However, even if I were to credit it, most of the assertions seem to be little more than expressions by Gilbert of his frustration at Scott for her not accepting the results of his investigation.

At the meeting, Scott denied disputing the seniority clause. Rather, she explained that Respondent Employer had transferred Amos and Jackson into the test area when there were no vacancies. Scott reminded Gilbert that he had promised to call her after speaking to Chisholm, but had failed to do so. Gilbert responded by explaining that the XM 795 could not be placed on the S-Line without the approval of safety. Gilbert again reiterated that he could not tell Thiokol where to send the XM 795. At that point, Lynn Grigsby and Charles Land, past union officers, joined the discussion. They asked how Respondent Union could justify allowing the transfer of a $5 per hour job to another area and reducing its pay to $4.80 per hour. Williamson merely repeated that the Union could not dictate the location of work. However, he assured them that there had been wage discussions and that they would continue.

Gilbert testified that he brought up and discussed the fact in this meeting that because Scott had previously brought up the issue of Amos and Jackson not being trained, he had investigated this aspect of the case. He related that by questioning Thiokol and employees, in the test area, he had found that Amos and Jackson had, in fact, been trained by experienced employees, but in locations where Scott had not been working.

Scott testified that "I agreed with the Seniority Clause but the interpretation of some of the language and some of the paragraphs, I disagreed." Scott's position was that because Amos and Jackson had not been trained they could not do the remaining work, and they should have been reduced out the department even though they had greater bargaining seniority than she did. Although Scott states at one point in the record that at the time she filed her grievance, she did not know if Amos and Jackson were qualified, she states that at the meeting on December 18, 1979, she was trying to make the point that, "I said they were not qualified to perform because they had not had the training."

After the meeting, Scott approached Gilbert and asked whether he was finished with her. He allegedly replied, "You show the Company such stupidity in filing a grievance at the fourth step, which is my step as president." Scott corrected him for calling her stupid. She explained that someone had to file a grievance because he would not and he had forbidden Howell to do so. Gilbert stated that he had reprimanded Clark for signing it and told him that Scott could have filed it in the second step. Scott reminded Gilbert that Jackson had flunked the hearing test but was sent to the test area when her grievance was filed. Gilbert agreed. He explained that once Jackson is accepted in the test area he had to stay. Then Gilbert said, "Your mouth, Helenise, your mouth is the cause of the Company creating this situation and using this union book to get you." Finally, Gilbert warned her to watch her step because her phone calls were being monitored. When Scott asked Gilbert which calls he meant, he said the ones to him. James Clark also overheard this conversation. He corroborated the fact that Gilbert blamed Scott's mouth for her demotion.[30]

Reverend John L. Moore, a material handler at Respondent Employer's facility, testified that he had a similar conversation with Herod Thomas on approximately December 10, 1979. Moore accused the Union of mistreating Scott by allowing her to be demoted from the test area. He explained that she had worked in the test area approximately 9 months before Amos and Jackson arrived. According to Moore, Thomas replied, "Yeah, we did sort of do her wrong but if she would shut her big mouth, we're going to get her back over there." Thomas then explained that Jackson who had been transferred into the test area had taken the test for guard but had failed the hearing test.

Herod Thomas testified that after the meeting Helenise Scott was engaged in a conversation with several people and he specifically heard her say "They got me. They got me. I will get even with them for it." On rebuttal, Thomas denied Moore's testimony, although he concedes he did say to Moore that the latter had a big mouth, and that Scott would be able to return to the test area whenever there was an opening.

C. *Independent 8(a)(1) Allegations*

1. Supervisor Bubba Banks

Scott testified without contradiction that on December 14, 1979, Supervisor Bubba Banks asked her, "Why did you file a grievance on me?" Scott denied doing so. Banks told her that his information had come from Gilbert. Scott clearly recalled Banks displaying a critical attitude and tone of voice toward her prior to this discussion.

Thiokol failed to present Banks or to offer any valid reason why he did not appear at the hearing to give testimony. I therefore draw an inference that Banks' testimony would have been adverse to Thiokol had Banks testified. Accordingly, such conduct is found to be violative of Section 8(a)(1) of the Act as alleged in paragraph 11 of the consolidated complaint.

2. Supervisor John Dart

Scott testified, without contradiction, that on December 17, 1979, she had a telephone conversation with John Dart, Thiokol's personnel group supervisor. According to Scott, she telephoned Dart and asked when they could discuss her grievance. He informed her that her grievance had been given to Gilbert. Scott said that Respondent Union was not representing her and that she was acting individually. Scott stated that she believed she was entitled to do so. Dart, however, merely suggested that she maintain her composure and call Gilbert.

Thiokol failed to present Dart or to offer any valid explanation for his absence. As Thiokol failed to produce any evidence to rebut the incident related above, I find that the conduct occurred as alleged.[31]

[30] Although Gilbert denied the reference to telephone monitoring, he did not specifically deny the testimony that he told Scott her mouth was the cause of her problems and that Thiokol was using the contract to "get" her. Even assuming Gilbert made the mouth/union-book remark to Scott on December 18, I find that it falls short of demonstrating that Gilbert failed to accord Scott fair representation or that Thiokol officials discriminated against Scott.

[31] Paragraph 15 of the consolidated complaint alleges that on or about December 17, 1979, Thiokol (no supervisor's name stated) "refused to

Continued

D. *Analysis and Concluding Findings*

1. Contract article 11—Amos and Jackson not disqualified

Past practice regarding a layoff within the 20-day period apparently is limited to one situation occurring in 1973 involving Clyde Rushing and three other employees.[32] However, at best, the evidence is ambiguous. Rushing testified that although he was not told he had been disqualified, he did state that the Company did ask him to return to his former department in order to avoid laying off any of the people already there. Rushing had greater bargaining unit seniority than the employees who remained and who had been there longer than 20 days, and he, steward Willard Williams, and Jesse Moore, the then president of the Union, thought that Rushing should not be sent back to his former department. Although Rushing testified he could not protest because he had been there less than 20 days, in fact a grievance was filed. Moore testified that he settled it with Personnel Manager Smallwood on the basis that Rushing would be the next person given the opportunity to transfer into receiving and shipping when production picked up.

Moore testified that Rushing and others were dissatisfied with the "settlement," that "they cussed me pretty good, but I told them that's the way it were, that they weren't there for twenty days and they would be given the opportunity to go back."

The General Counsel and the Union both rely on the Rushing case as support for their respective positions. However, I find it to be ambiguous and not serving to establish a past practice which would justify an inference of unlawful motivation by Thiokol's departing therefrom in Scott's case—especially where, as here, any "departure" has been followed in identical situations in 1980. Thus, in one instance in which a layoff has occurred since Scott's, Respondents followed the same contract interpretation applied in Scott's situation.[33]

Quality Control Manager Chisholm credibly testified that he personally observed Amos and Jackson working on several occasions during the period in question, and that he was favorably impressed with their performance. He further testified, in effect, that when Thiokol took no action to disqualify Amos and Jackson, they were considered qualified. Whether this interpretation (shared by Bullock and other witnesses of Respondents) of the contract clause (art. 11-B-4 and 11-C-2) is correct is relevant only in the sense that a clearly unreasonable interpretation might be evidence tending to support the General Counsel's case. In light of the entire record, I find that the evidence falls short of demonstrating that Respondents' interpretation of article 11 of the contract was discriminatorily motivated against Scott.

2. XM 795—Vacancies—Scott's alleged 8(a)(1) layoff

As earlier noted, Technical Director Johnson testified in an unhesitating, straightforward, and persuasive manner, and I credit his testimony fully. Personnel Supervisor Bullock testified in a similar fashion, and I credit him completely. While I was not nearly as impressed with the demeanor of Quality Control Manager Chisholm as I was with Johnson and Bullock, I do credit his testimony in essential respects. Accordingly, I find that the vacancies appeared real to Thiokol and were filled with Amos and Jackson without regard to any adverse consideration of Scott by the latter's coworkers and first-line supervisors.[34]

I further find that the XM 795's move to the S-Line was economically motivated and not based on any adverse consideration against Scott.

It follows, and I find, that the evidence is insufficient to establish that Thiokol and the Union prearranged Scott's layoff for proscribed reasons. Accordingly, I shall recommend that complaint paragraphs 14, 16, and 18, which allege that Thiokol violated Section 8(a)(1) of the Act in laying off Scott, be dismissed.

3. Independent 8(a)(1) allegations

As noted earlier, I have found that Thiokol, through Supervisors Banks and Dart, violated Section 8(a)(1) of the Act as alleged in paragraphs 11 and 15.

4. The 8(b)(1)(A) allegations

In light of the foregoing, I find the complaint allegations of violations of Section 8(b)(1)(A) by the Union to be without merit. Thus, the Union did not fail to represent Scott fairly; did not act for arbitrary reasons; and did not investigate Scott's grievance in a perfunctory manner. Accordingly, I shall recommend that paragraphs 12(b) and (c), 13, and 17 of the consolidated complaint be dismissed.

meet with Scott to discuss her grievance which she filed on December 13, 1979."

[32] Respondents objected to this evidence on the basis that the event occurred under the 1971-74 contract with Sperry Rand. I affirm my overruling of the objection. Not only is Thiokol Sperry Rand's successor at the LAAP, it adopted the then-existing contract and recognized the seniority of the unit employees involved here. On the other hand, while I deem the evidence admissible, I do not consider it controlling, particularly since it is ambiguous and involved but a single event. Finally, I note that the complaint does not allege a departure from past practice as an unilateral change prohibited by Sec. 8(a)(5) of the Act.

[33] In a June 1980 layoff, Dinver G. Williams remained in the H-341 classification when Ledford Driskell bumped Mary Maniscalco out. Although Williams had been in the classification only 7 days, she remained, and Maniscalco had to go, because Williams had greater bargaining unit seniority than the former (Resp. Exh. 1, p. 5).

[34] As may be gleaned from my findings, it may well be that Scott's coworkers and first-line supervisors in the test area did not like her because of personality differences. Indeed, they may earnestly have desired that she be transferred. But even if such were true, such fact does not establish a causal link to the business needs to lay off two test area inspectors. The General Counsel has shown no possible reason, motive, or explanation of how Thiokol would profit by having Scott move from one department to another. There is no showing as to why the managers who made the decisions, particularly Johnson, would have been even remotely interested in such a move. It may be true that some circumstances herein, because of the coincidence of events, could cause reasonable persons to be suspicious of the reasons for the XM 795 transfer and subsequent layoff of Scott. Suspicions, however, do not overcome the positive explanations of Johnson and Bullock.

CONCLUSIONS OF LAW

1. Respondent Thiokol is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent Thiokol has violated Section 8(a)(1) of the Act by coercively interrogating Helenise Scott concerning the grievance she filed on December 13, 1979, and by referring her to Respondent Union on or about December 17, 1979, and by refusing her request that Thiokol's representatives discuss directly with her the grievance she filed individually.

4. The acts and conduct of Respondent Thiokol, described above in Conclusion of Law 3, constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

5. The General Counsel has not established that Respondent Thiokol has violated the Act in any manner other than as found above in Conclusions of Law 3 and 4.

6. The General Counsel has not established that Respondent Union has violated the Act in any manner.

THE REMEDY

Having found that Respondent Thiokol has engaged in unfair labor pactices as set forth above, I shall recommend that it be ordered to cease and desist therefrom, to take certain affirmative action designed to effectuate the policies of the Act, and to post signed and dated copies of an appropriate notice to employees. While the unfair labor practices are not extensive, they involve employees' ability to freely utilize the contractual grievance procedure in the exercise of their Section 7 rights. Accordingly, a notice to employees is appropriately ordered.

Upon the foregoing findings of fact, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[35]

The Respondent, Thiokol Corporation, Louisiana Division, Shreveport, Louisiana, it officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Coercively interrogating its employees concerning grievances they may file under the collective-bargaining agreement.

(b) Referring its employees to Respondent Union and refusing to discuss with such employees grievances they may have filed individually under the collective-bargaining agreement.

(c) In any like or related manner interferring with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Post at its Shreveport, Louisiana, facility signed and dated copies of the attached notice marked "Appendix."[36] Copies of said notices on forms provided by the Regional Director for Region 15, after being duly signed and dated by a representative of Respondent Thiokol, shall be posted by Thiokol immediately upon receipt thereof, and shall be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Thiokol to insure that such notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 15, in writing, within 20 days from the date of this Order, what steps Respondent Thiokol has taken to comply herewith.

IT IS FURTHER ORDERED that the consolidated complaint be dismissed insofar as it alleges violations of the Act by Respondent Thiokol not found herein.

IT IS FURTHER ORDERED that the consolidated complaint be dismissed insofar as it alleges violations of the Act by Respondent Union.

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[35] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[36] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."